

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DONALD BANGO and SCOTT BAILEY,
individually and on behalf of all others
similarly situated;

Plaintiffs,

v.

PIERCE COUNTY, WASHINGTON; PIERCE
COUNTY SHERIFF'S DEPARTMENT, and their
officers, agents, employees, and successors;

Defendants.

NO. 3:17-cv-06002-RBL-DWC

**COMBINED JOINT STATUS REPORT AND
DISCOVERY PLAN**

The parties submit this Joint Status Report pursuant to Local Rule 16(a) and Federal Rule of Civil Procedure 26(f).

1. NATURE AND COMPLEXITY OF THE CASE.

Plaintiffs' Position:

Plaintiffs seek declaratory and injunctive relief against Defendants concerning the treatment of a class of individuals with mental illness incarcerated at the Pierce County Jail. Plaintiffs allege that Defendants' policies, practices, and procedures violate the Eighth

1 and Fourteenth Amendments to the U.S. Constitution, the Americans with Disabilities Act,
2 42 U.S.C. § 12132, and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794.
3 Specifically, Plaintiffs allege that Defendants have the following policies, practices, and
4 procedures that are unlawful: (1) failing to screen for mental illness during the booking
5 process and during incarceration; (2) ignoring signs of mental illness and requests for help;
6 (3) delaying and refusing to provide needed mental health treatment; (4) delaying, or in
7 some cases not providing at all, needed psychiatric medications; (5) punishing those who
8 decompensate by restraining them physically; (6) warehousing people with mental illness
9 in solitary confinement despite the clinically proven negative impacts of isolation.
10

11 **Defendants' Position:**

12 Defendants deny that Pierce County's policies and practices violate the U.S.
13 Constitution or any statute. The parties disagree regarding the complexity of the case. This
14 is a §1983 action brought by two inmates incarcerated at the Pierce County Jail who claim
15 that defendants fail to provide adequate mental health treatment in violation of the Eighth
16 and Fourteenth Amendments, violation of the Americans with Disabilities Act ("ADA"), and
17 the Rehabilitation Act. They seek certification of a class of qualified individuals who have a
18 mental illness that are disabilities as defined by 42 U.S.C. §12102 and 29 U.S.C.
19 §705(9)(B), and who are now, or will be in the future, incarcerated at the Pierce County
20 Jail. Plaintiffs believe that the case is of typical complexity. Defendants believe that this is
21 a complex case. If a class action is certified, this case will require medical analysis for
22 identification of hundreds of different mental illnesses, and involve voluminous discovery
23 focused on six different claim categories that include: (1) failing to provide adequate
24 mental health screening; (2) ignoring signs of mental illnesses and requests for treatment;
25 (3) refusing to provide treatment for mental illness; (4) delaying or denying mental health
26

1 care and medications; (5) punishment for non-violent behaviors caused by mental illness;
2 and (6) use of solitary confinement on individuals with mental illness. Potentially dozens
3 of witnesses, and numerous experts will be involved.

4
5 **2. PROPOSED DEADLINE FOR JOINT ADDITIONAL PARTIES**

6 The parties request that the Court establish the deadline for joining additional
7 parties.

8 **3. CONSENT TO MAGISTRATE JUDGE.**

9 The parties do not consent to trial by Magistrate Judge.

10 **4. DISCOVERY PLAN.**

11 **A. Initial Disclosures.**

12 To be completed by July 6, 2018, per the Court's June 1, 2018 order setting discovery
13 deadlines.

14 **B. Timing and Potential Phasing of Discovery.**

15 **Plaintiffs' Position:**

16 Plaintiffs do not believe that discovery should be conducted in phases or bifurcated
17 in any way. Plaintiffs stipulated to early discovery at Defendants' request and in the interest
18 of cooperation, as permitted by Fed. R. Civ. P. 26(d)(1). Plaintiffs' understanding was that
19 discovery was not limited in scope, and that the scope of discovery can only be limited
20 pursuant to a court order. See Fed. R. Civ. P. 26(b)(1). Defendants have neither sought
21 nor obtained a court order bifurcating discovery. Further, it is Plaintiffs' position that
22 bifurcation of discovery is inappropriate in this case.

23 **Defendants' Position:**

24
25 Defendants believe discovery should be conducted in phases. This matter has not
26 yet been certified as a class action. On December 4, 2017, at the beginning of this case,

1 Plaintiffs filed a Motion for Class Certification at the same time they filed their Complaint.
2 After the complaint was filed, and because the motion was noted to be heard so soon, the
3 parties agreed that some limited discovery could take place prior to completion of a CR
4 26(f) conference, which was to allow defendants to obtain discovery related to class
5 certification and prepare a response to Plaintiffs' motion. However, Plaintiffs later claimed
6 they had a different understanding of our agreement and believed that the scope of
7 discovery was unlimited and included discovery regarding the putative class and the merits
8 of Plaintiffs' claims.
9

10 Defendants maintain that discovery has been limited to class certification issues,
11 and that putative class and merits discovery can take place once class certification has
12 been determined. Discovery has proceeded under that limitation. Plaintiffs have not
13 claimed prejudice to this limitation. Plaintiffs' putative class and merits discovery is
14 extensive and involves medical analysis for identification of hundreds of different mental
15 illnesses. Plaintiffs seek, among other putative class and merits discovery, all inmate
16 records and materials from approximately 2014 to the present that includes all inmate
17 incident reports, all use of force reports, all inmate grievance materials, and all inmate
18 materials related to any inmate death or suicide. Plaintiffs only recently sought to obtain
19 authorization from the Court to release any information that would be subject to RCW
20 70.48.100, which protects as confidential records of a person confined in jail. Until just
21 recently, Plaintiffs also took no action to complete a 26(f) conference (completed May 24,
22 2018 and June 5, 2018).
23

24 Plaintiffs have already filed their Motion for Class Certification, and phasing or
25 bifurcating discovery does not restrict Plaintiffs' ability to prepare for class certification.
26 Plaintiffs' Motion for Class Certification is scheduled for hearing on August 18, 2018.

1 Defendants' response to Plaintiffs' Motion for Class Certification is due August 13, 2018.
2 Class certification discovery started in approximately the middle of January 2018, and no
3 further class certification discovery should be needed at this late date. Plaintiffs have
4 offered no reason why putative class and merits discovery would be needed before
5 determination of class certification. Plaintiffs have offered no reason why phasing or
6 bifurcation of discovery would be inappropriate. Putative class and merits discovery before
7 determination of class certification would be very time consuming and burdensome to
8 defendants. Phasing or bifurcating discovery prevents the parties and the Court from
9 wasting resources and time on matters that do not bear on class certification. Defendants
10 ask that the Court phase/bifurcate discovery at this time with putative class merits
11 discovery starting after determination of class certification. If the Court does not
12 phase/bifurcate discovery at this time, defendants ask that the Court do so without
13 prejudice to Defendants' ability to file a motion to bifurcate discovery, or protective order,
14 and also allow Defendants at least 30 days to begin providing initial responses to any
15 outstanding discovery.
16

17 C. Electronically Stored Information.
18

19 Plaintiffs anticipate that Electronically Stored Information may play a role in this
20 litigation, but the size of that role is currently unknown, and may remain so until Defendants
21 provide Plaintiffs with detailed information regarding outstanding answers and responses
22 to discovery propounded by Plaintiffs to Defendants.

23 Defendants believe that this case may involve a large amount of electronically
24 stored information.
25
26

1 D. Privilege Issues. There are no unusual privilege issues that the parties have
2 currently identified.

3 E. Proposed Limitations on Discovery.

4 Plaintiffs oppose any limitations on the scope of discovery. It is Defendants' position
5 that discovery should be conducted in phases as indicated in Section 4(B).
6

7 F. The Need for Any Discovery Related Orders. Plaintiffs have moved to enter
8 a protective order in this case, which is currently pending before the Court. See Dkt #54-
9 2.

10 5. THE PARTIES' VIEWS, PROPOSALS AND AGREEMENTS PURUSANT TO LOCAL RULE
11 26(f)(1).

12 A. Prompt Case Resolution. The parties believe that this case is best
13 proceeding through the Court's typical resolution track.

14 B. Alternative Dispute Resolution. The parties will continue to evaluate whether
15 a mediation is appropriate and whether mediation before or after significant discovery
16 would be the most beneficial. Keeping in mind the alternative dispute resolution potentials
17 discussed later in this document, the parties believe at this time, the Court should set a
18 standard and appropriate trial date for the resolution of this matter.

19 C. Related Cases.

20 The parties disagree about what cases are related to this case.

21 **Plaintiffs' Position:**

22 It is Plaintiffs' position that a previous case before this Court, *Herrera v. Pierce*
23 *County*, case number 3:95-cv-05025-RJB-JKA, Judge Robert J. Bryan presiding, is a related
24 case. The *Herrera* lawsuit involved Pierce County's policies and practices at the Pierce
25 County Jail, including the lack of adequate mental health care. The lawsuit was settled in
26

1 1996 with the court appointing a monitor for Pierce County's progress in fulfilling the terms
2 of the settlement. The case was ultimately terminated on February 25, 2011.

3 **Defendants' Position:**

4 It is Defendants' position that *Trueblood v. Washington State Dept. of Social and*
5 *Health Services* ("DSHS"), case number 2:14-cv-01178-MJP, Judge Marsha J. Pechman
6 presiding, is a related case. The *Trueblood* litigation involved a class of pretrial detainees
7 suspected of being mentally incompetent who brought a §1983 action seeking permanent
8 injunction and declaratory judgment establishing the time frame within which due process
9 required DSHS provide competency evaluations and restoration services to such
10 detainees. After a bench trial, the Court found DSHS in violation by not providing
11 competency evaluations and restoration services, insufficient number of beds and
12 personnel as a result of inadequate funding and planning, and the harmful effects of
13 prolonged incarceration without evaluation and treatment for mentally ill detainees.
14 Injunction was ordered and is still active.

15
16 D. **Discovery Management.** The parties already began discovery as explained
17 in Section 4(B). To date, Defendants have propounded interrogatories and requests for
18 production related to class certification, and also conducted depositions of both Plaintiffs
19 in preparation for response to Plaintiffs' Motion for Class Certification. Plaintiffs have also
20 propounded interrogatories, requests for production, and requests for admission.

21
22 E. **Anticipated Discovery Sought.**

23 **Plaintiffs' Anticipated Discovery:**

24 Plaintiffs will be seeking discovery regarding Pierce County's policies and practices
25 in its treatment of inmates with mental illness at the Pierce County jail and information
26 documenting how inmates with mental illnesses have been treated. Specifically, Plaintiffs

1 have propounded or intend to propound discovery related to the following issues:

- 2 1. Records related to the named Plaintiffs in possession, control, and
- 3 custody of Defendants.
- 4
- 5 2. Defendants' policies and practices concerning mental health treatment,
- 6 uses of force, restraints, and isolation in the Pierce County Jail, including
- 7 data and records related to the same.
- 8
- 9 3. Records related to inmate deaths, including suicide deaths.
- 10
- 11 4. Records related to discipline of Pierce County Jail employees.
- 12
- 13 5. Organizational charts and other records related to mental health staffing
- 14 in the Pierce County Jail.
- 15
- 16 6. Records related to Defendants' affirmative defenses.

17 **Defendants' Anticipated Discovery:**

18 Defendants anticipate conducting discovery initially regarding class certification,
19 and subsequently after class certification determination regarding the merits of the claims
20 in this lawsuit.

21 F. **Phasing Motions.** The parties do not see any particular basis for the phasing
22 of motions, or trial at this time.

23 G. **Preservation of Discoverable Information.** Counsel for all parties have
24 counseled their respective clients on the preservation of discoverable information,
25 including electronically stored information.

26 H. **Privilege Issues.** There are no unusual privilege issues that the parties have
currently identified.

I. **Model Protocol for Discovery of ESI.**

Plaintiffs anticipate that Electronically Stored Information may play a role in this

1 litigation, but the size of that role is currently unknown. The parties may adopt the Court's
2 Model ESI Agreement if they can come to terms that are agreeable to all parties. Should
3 the need arise for a different stipulation regarding ESI, the parties will attempt to craft one
4 to suit the needs of this case.

5
6 Defendants believe that this case may involve a large amount of electronically
7 stored information. The parties may adopt the Court's Model ESI Agreement and request
8 that an appropriate order be entered at a later date.

9 **6. DISCOVERY COMPLETION.**

10 The parties request a discovery completion date of 120 days before trial. The
11 parties also request a dispositive motion deadline of 90 days before trial.

12 **7. BIFURCATION.**

13 Defendants believe discovery should be phased or bifurcated. The parties do not
14 see any particular basis for the phasing of motions, or trial at this time.

15 **8. PRETRIAL STATEMENTS AND PRETRIAL ORDER.**

16 The parties agree that the Court's pretrial order and related process is appropriate.

17 **9. SUGGESTIONS FOR SHORTENING OR SIMPLIFYING CASE.**

18 The parties do not have any specific requests or suggestions regarding the
19 simplification of the case. Following reasonable discovery, the parties may file motions to
20 narrow or resolve the disputes.
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1 10. **DATE CASE WILL BE READY FOR TRIAL.**

2 Plaintiffs believe that the case should be ready for trial any time after February 19,
3 2019. Defendants believe that the date for trial readiness is unclear because Plaintiffs
4 recently gave notice that they intend to amend their Complaint. Plaintiffs have offered no
5 timeframe for when the proposed amendment will be made. Based on Plaintiffs' current
6 complaint, and the complexity of this case, defendants estimate that the case may be ready
7 for trial after June 1, 2019.
8

9 11. **JURY TRIAL.**

10 Plaintiffs are not seeking a jury trial. Defendants have requested a jury trial.

11 12. **NUMBER OF TRIAL DAYS REQUIRED.**

12 Plaintiffs anticipate approximately 15 trial days.

13 Defendants anticipate approximately 20 trial days.

14 13. **NAME, ADDRESS, AND TELEPHONE NUMBER OF ALL TRIAL COUNSEL.**

15 **Counsel for Plaintiff:**

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14. **DATES ON WHICH TRIAL COUNSEL MAY HAVE COMPLICATIONS TO BE CONSIDERED
IN TRIAL SETTING.**

The parties have not included any dates in 2018 because this case will not be ready to be tried until 2019.

In 2019, the Plaintiffs have the following conflicts:

January 10, 2019: Mr. Mungia and Ms. Chase have a trial set in Pierce County Superior Court that is estimated to last six trial days.

On May 7, 2019, Mr. Mungia and Ms. Chase have a trial set in Federal District Court for the Western District of Washington, Tacoma, that is estimated to last eight court days.

On May 11, 2019 Mr. Mungia has a trial set in King County Superior Court that is estimated to last eight court days.

On August 8, 2019 Mr. Mungia has a trial set in Pierce County Superior Court that is estimated to last twelve court days.

15. **STATUS OF SERVICE ON DEFENDANTS.**

All Defendants are served.

16. **SCHEDULING CONFERENCE.**

The parties do not request a scheduling conference before the issuance of a scheduling order for this matter.

17. **NON-GOVERNMENTAL CORPORATE DISCLOSURE STATEMENT FILING DATE:**

Not applicable.

Respectfully submitted this 28th day of June, 2018.

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**Permission for inclusion of the electronic
signatures of Attorneys for Defendants granted
via e-mail as of June 27th, 2018.

CERTIFICATE OF SERVICE

I hereby certify that on June 28th, 2018 I electronically filed the foregoing
Combined Joint Status Report and Discovery Plan with the Clerk of the Court using the
CM/ECF system, which will send notification of such filing to the attorney of record:

By /s/ Michelle Luna-Green
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DATED THIS 28th day of June, 2018 at Seattle, Washington

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